Hazardous Materials Information Review Commission

2011-2012

Departmental Performance Report

The Honourable Leona Aglukkaq
Minister of Health

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President's Message

I am pleased to present to Parliament and to Canadians the Hazardous Materials Information Review Commission's Departmental Performance Report 2011-12. This report reflects the success of the Commission in fulfilling its mandate and meeting its priorities over the past year.

In 2011-12 the Hazardous Materials Information Review Commission (HMIRC) structured its activities under a new Program Activity Architecture with two operational programs in addition to internal services. These programs are: Statutory Decisions and Compliant Information as well as Stakeholder Engagement and Strategic Partnerships. This realignment serves to more clearly indicate the importance HMIRC places on undertaking work to safeguard trade secret claims for exemption and to make compliant health and safety information available in the most efficient, effective and economical ways possible. Partnering will help to promote and disseminate the Commission's scientific knowledge and expertise to the mutual benefit of industry and Canadian workers.

A significant effort has been devoted to improving the claim exemption process through a process improvement plan. Borrowing from knowledge and skills in Operations and Corporate Services, this plan was developed and is now in an early implementation phase. E-submission, that is the electronic transmission of claim applications, is a key element which will enhance communications between HMIRC and claimants. E-submission has the strong support of claimants.

The approaching implementation of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) in Canada will have significant implications for HMIRC's review of Material Safety Data Sheets (MSDSs). The Commission has actively followed developments and has participated in forums with other stakeholders to contribute to this very important initiative.

With the full implementation of its Integrated Plan, the Commission is beginning to realize improvements in organizational alignment and the management of resources.

In the 2012 federal budget, the government announced its decision to transfer the functions and responsibilities of the Commission to Health Canada, and, therefore, eliminate HMIRC as a stand alone agency by the end of fiscal year 12/13. Health Canada already has responsibility for the national Workplace Hazardous Materials Information System (WHMIS) of which HMIRC is an important component, serving as the trade secret exemption process to allow suppliers/employers to protect confidential business information while ensuring labels and material safety data sheets accurately and completely disclose all hazard information for workers. I believe this change will not only achieve efficiencies but serve to enhance the collaborative nature of this national

program and optimally position WHMIS and HMIRC responsibilities in light of the upcoming implementation of the GHS.

I am personally committed to leading the Commission through a smooth transition in 2012-13 so that this renewed program continues to enhance the protection of worker health and safety in Canada while protecting industry competitiveness.

I would like to acknowledge the support and commitment of the Council of Governors over the past year, as well as the dedication of the Commission's staff. Together we have been able to provide a service that is vital to industry and workers.

Sharon A. Watts
President and CEO

SECTION I: ORGANIZATIONAL OVERVIEW

Raison d'être

The Hazardous Materials Information Review Commission (HMIRC) provides a single mechanism under federal, provincial and territorial legislation to protect the trade secrets of companies that supply or use hazardous materials, and ensures that Canadian workers who handle such materials have all the information they need to do so safely.

Responsibilities

The Commission enables companies to protect their trade secrets and, at the same time, requires that material safety data sheets (MSDSs) for products with trade secrets used by workers in Canada disclose complete and accurate information to reduce workplace-related illness and injury. The Commission's activities are key components of the Workplace Hazardous Materials Information System (WHMIS), which was created in 1987 through a consensus between workers, industry and government. The success of WHMIS depends on cooperation among all these partners. All three groups play an integral part in ensuring that chemical products are used as safely as possible in Canadian workplaces.

WHMIS requires that suppliers provide employers with MSDSs and product labels which detail information on the hazards of materials sold for use in Canadian workplaces. The employers, in turn, provide these MSDSs and labels to workers and, as well, training on how to handle the products safely. A product's MSDS must fully disclose all hazardous ingredients in the product, their toxicological properties, the safety precautions workers need to take when using the product, treatment required in the case of injury, and other pertinent information.

When a supplier introduces a product and wants to protect the identity or concentration of one or more of the hazardous ingredients, according to the *Hazardous Materials Information Review Act* (HMIRA), the company needs to apply to HMIRC for an exemption from the requirement to list all hazardous ingredients on the product's MSDS. Once HMIRC registers a claim, the product can be made available in the marketplace without disclosing the confidential business information. The Commission then evaluates the claim and issues a decision on its validity and, to protect workers, verifies the compliance of the MSDS with the *Hazardous Products Act* (HPA) and the *Controlled Products Regulations* (CPR).

When an employer purchases a product and wants to protect the identity and/or concentration of any hazardous ingredients, or the name and the supplier of the product,

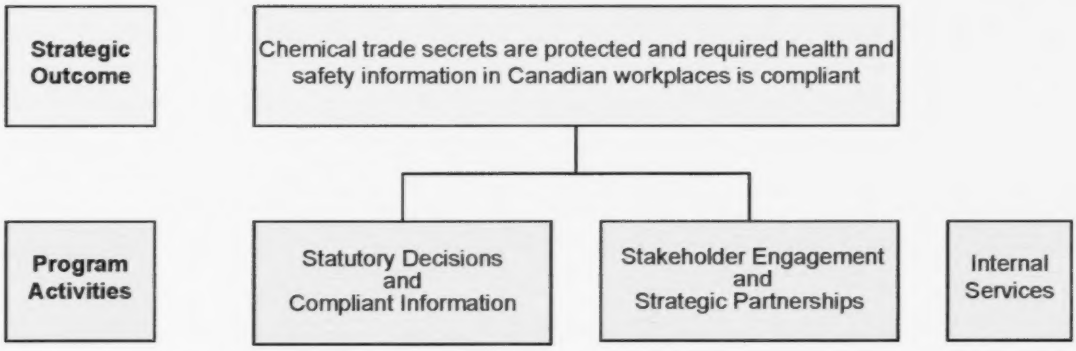
according to the HMIRA, the company also needs to apply to HMIRC for an exemption. In this case, in addition to issuing a decision on the claim's validity, the Commission evaluates the MSDS and, if necessary, the label, against the requirements of either the *Canada Labour Code*, for federally regulated employers, or the relevant provincial or territorial occupational health and safety legislation.

Where areas of non-compliance are identified, the Commission offers claimants the opportunity to make corrections through voluntary compliance undertakings. If the claimant chooses not to accept the undertaking, the Commission issues formal orders obligating the claimant to make the changes.

In cases where there are disputes that cannot be resolved, HMIRC convenes independent boards to hear appeals from claimants or affected parties challenging decisions and orders or from affected parties challenging undertakings signed by claimants and accepted by HMIRC.

In addition, HMIRC responds to requests from federal, provincial or territorial government health and safety officials for information about claims for exemption to help these officials administer and enforce their WHMIS obligations.

Strategic Outcome and Program Activity Architecture (PAA)


Strategic Outcome
Chemical trade secrets are protected and required health and safety information in Canadian workplaces is compliant
Program Activities
Statutory Decisions and Compliant Information
Stakeholder Engagement and Strategic Partnerships
Internal Services

Organizational Priorities

Priority 1	Type[1]	Strategic Outcome and/or Program Activity
Advance compliance with WHMIS standards	Ongoing	Strategic Outcome
The Commission continued to advance compliance through ongoing improvements to the claims process. Chemical hazard information sources were updated, access to the data management system expanded, and the ingredient database enhanced. Discussion and consultation on the electronic submission of claims applications was advanced, options considered and most efficient solution approved. A survey of claimants has confirmed that a high percentage of HMIRC corrected information on trade secret MSDSs is being applied to other MSDSs in the industry.		
Priority 2	**Type**	**Strategic Outcome and/or Program Activity**
Increase stakeholder knowledge of chemical hazard classification and communication	Ongoing	Strategic Outcome
The Commission continued to monitor developments in the implementation of GHS internationally, especially in the US where a significant number of claimants are based. The last quarter of 2011-12 experienced more focused activity on Canada's GHS implementation timetable. A significant majority of surveyed stakeholders acknowledged that the Commission's work had increased their knowledge of hazard communication and that they had applied this knowledge to improve hazard communication. HMIRC participated in an assessment of preventive measures statements used on trade secret MSDSs, including Personal Protective Equipment (PPE).		

[1]. Type is defined as follows: **previously committed to**—committed to in the first or second fiscal year prior to the subject year of the report; **ongoing**—committed to at least three fiscal years prior to the subject year of the report; and **new**—newly committed to in the reporting year of the RPP or DPR.

Priority 3	Type	Strategic Outcome and/or Program Activity
Leverage the Commission's knowledge, expertise and resources through key partnerships	Ongoing	Strategic Outcome
An approved Strategic Partnership Framework and action plan established the direction and principles for developing, managing and evaluating strategic partnerships. Critical considerations for potential partnerships were identified. These considerations include: prioritizing partnerships that deal with the implementation of the GHS in Canada; the use of phased-in approaches (i.e. pilot projects); the use of partnerships to avoid duplication of effort and the increased economical use of resources; and the choice of partners based on ability to impact target groups.		
Priority 4	**Type**	**Strategic Outcome and/or Program Activity**
Enhance management accountability	Ongoing	Internal Services
The Commission implemented an operational plan across the organization, aligning activities and resources with established strategic directions. Support for planning and accountability was enhanced through the implementation of corporate frameworks.		

Risk Analysis

Operational Context

Labour, industry and government agree on the importance of preventing illnesses and injuries from hazardous materials in Canadian workplaces. To help achieve this goal WHMIS was created through the adoption of laws and regulations and the development of procedures in the late 1980s. WHMIS requires suppliers, including manufacturers, importers and distributors, and employers, to provide health and safety information about the chemicals produced or used in Canadian workplaces.

As part of the WHMIS initiative, the HMIRA and its regulations also came into force. This legislation established HMIRC, an independent agency with a quasi-judicial role. The Commission provides the mechanism in Canada to protect the confidential business information of chemical suppliers and employers while requiring that accurate and complete health and safety information is available to workers.

Risks and Opportunities

The Commission successfully processed the number of claims in 2011-12 targeted for review. There were considerably more claims registered than in the previous year however, which is reflected in an increase in the claims in queue. The Commission will need to actively monitor the volume of claims for exemption registered so it has the capacity to make accurate health and safety information available to workers in a timely manner.

The implementation of GHS in Canada will impact hazard communication under WHMIS and consequently the work at HMIRC. It will be worthwhile to explore the feasibility of partnering to develop tools to help the public transition to GHS once implemented.

In the past year, the Commission assessed and reported on information provided now on MSDSs for Preventive Measures. A next step will be to examine ways to improve the guidance provided to claimants on this MSDS element. Through the development and review of its guidance information and tools, the Commission can continue to enhance the completeness, accuracy, comprehensibility and accessibility of hazard communications.

The Commission's Integrated Plan has successfully linked operational planning to strategic directions and has committed resources to results. This has maintained the organizations focus on meeting its mandate while improving efficiency, effectiveness and economy.

Summary of Performance

2011–12 Financial Resources ($ thousands)[2]

Planned Spending	Total Authorities	Actual Spending
4,535	4,821	4,531[3]

2011–12 Human Resources (Full-Time Equivalents - FTEs)

Planned	Actual	Difference
42	40	2

Strategic Outcome: Chemical trade secrets are protected and required health and safety information in Canadian workplaces is compliant.

[2] Financial Resources equals the Total line for Program Activities and Internal Services.

[3] In FY 2010-11, a technical financial transaction error resulted in an over-expenditure of the Commission's spending activities. The variance between Actual Spending and Total Authorities is partially due to a frozen allotment that was set up to offset this over-expenditure.

Performance Indicators	Targets	2011–12 Performance
Percentage of claimants who have applied corrected trade secret protected material safety data sheet (MSDS) information to other MSDSs	50%	***83%***
Estimated financial value of confidential business information protected under the *Hazardous Materials Information Review Act*	$100M	***$931M***

($ thousands)

Program Activity	2010–11 Actual Spending	2011–12				Alignment to Government of Canada Outcome
		Main Estimates	Planned Spending	Total Authorities	Actual Spending	
Claims Exemption Process	3,306	N/A	N/A	N/A	N/A	Healthy Canadians
Statutory Decisions and Compliant Information	N/A	2,797	2,797	2,974	2,192	Healthy Canadians
Stakeholder Engagement and Strategic Partnerships	N/A	538	538	571	427	
Total	3,306	3,335	3,335	3,545	2,599[4]	

($ thousands)

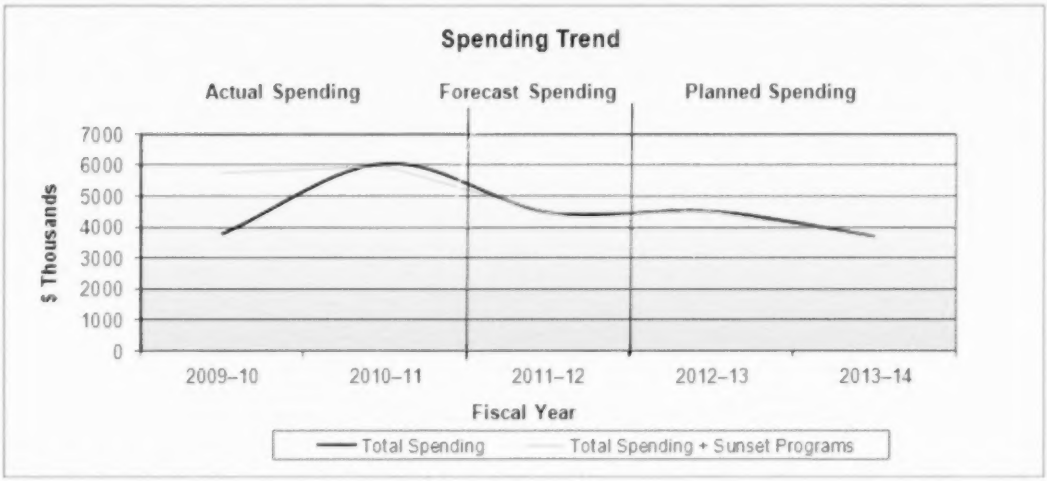
Program Activity	2010–11 Actual Spending	2011–12			
		Main Estimates	Planned Spending	Total Authorities	Actual Spending
Internal Services	2,760	1,200	1,200	1,276	1,912[4]

[4] The variance between Total Authorities and Actual Spending is the result of the Employee Benefits Plan (EBP) being fully accounted for in Internal Services. Starting in fiscal year 2012-13, EBP will be accounted for in each of the program activities.

Strategic Environmental Assessment

During 2011–12, the Hazardous Materials Information Review Commission considered the environmental effects of initiatives subject to the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*.

Expenditure Profile



Estimates by Vote

For information on our organizational votes and/or statutory expenditures, please see the 2011–12 Public Accounts of Canada (Volume II) publication. An electronic version of the Public Accounts is available at http://www.tpsgc-pwgsc.gc.ca/recgen/txt/72-eng.html.

SECTION II: ANALYSIS OF PROGRAM ACTIVITIES BY STRATEGIC OUTCOME

Strategic Outcome

Chemical trade secrets are protected and required health and safety information in Canadian workplaces is compliant

Program Activity 1.1: Statutory Decisions and Compliant Information

Description:

The Workplace Hazardous Materials Information System (WHMIS) requires chemical manufacturers, importers, distributors, and employers to provide cautionary labelling and material safety data sheets (MSDSs) for every controlled product produced, used or intended for use by workers in Canadian workplaces. Pursuant to the *Hazardous Materials Information Review Act*, the Hazardous Materials Information Review Commission has the mandate to make decisions on the validity of claims for exemption from disclosure requirements under WHMIS, while ensuring that associated health and safety information made available to Canadian workers is compliant with the WHMIS standards. Specifically, to fulfill its program requirements, the Commission registers claims, issues decisions on claim validity and compliance, offers claimants an opportunity to comply voluntarily and when necessary, orders claimants to take actions to bring MSDSs and/or labels into compliance. In carrying out this program, the Commission fosters proactive compliance. It assists claimants in respecting relevant statutory requirements by providing the information, knowledge, tools and support they need to submit complete and accurate claims and bring associated MSDSs and/or labels into compliance.

2011–12 Financial Resources ($ thousands)

Planned Spending	Total Authorities	Actual Spending
2,797	2,974	2,192 See note 4 on page 8

2011–12 Human Resources (FTEs)

Planned	Actual	Difference
25	22	3

Expected Results	Performance Indicators	Targets	Performance Status
Claimants submit valid claims	Percentage of claims found to be valid on review	100%	100%
Claimants are proactively compliant with Workplace Hazardous Material Information System requirements	Average number of violations in material safety data sheets of record	4.5	6.3

Performance Summary and Analysis of Program Activity

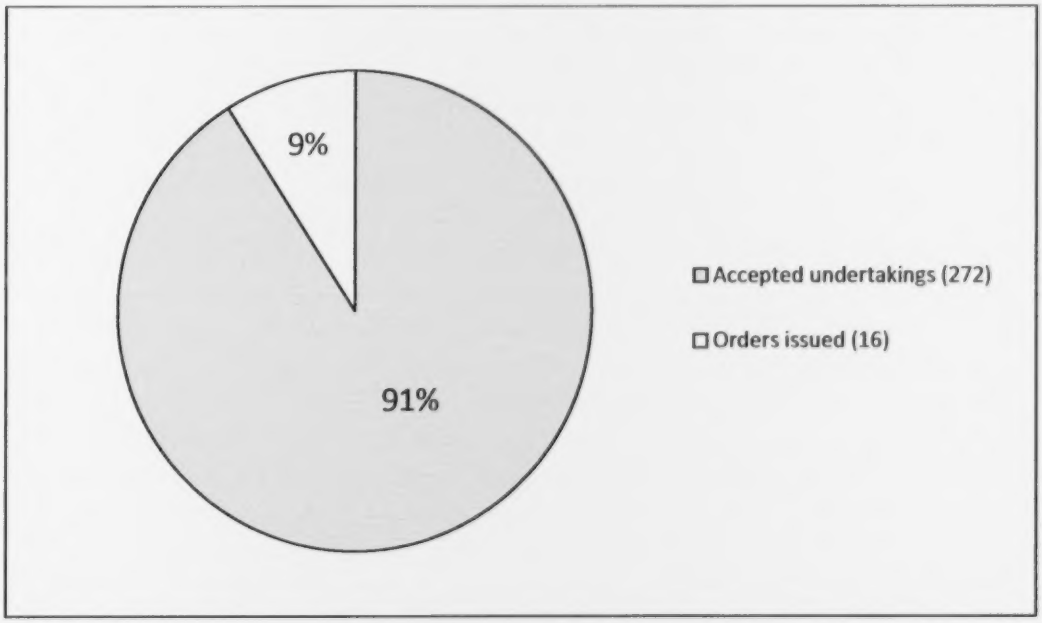
HMIRC successfully processed a total of 349 claims in 2011-12 (see Table 1 below). This total included 319 decisions and 30 withdrawals. At year end there were 395 claims in queue for processing.

Table 1

2011-12 Claims processing activity	Number of claims
Claims registered in 2011-12	421
Claims processed in 2011-12 Decisions / Compliant (31) Decisions / Compliant post undertaking (272) Decisions / Order issued (16) Withdrawals (30)	349
Claims in queue at 31 March 2012	395

In 2011-12, voluntary undertakings by claimants increased earlier compliance by 91% or 272 claims of the total 288 claims assessed to be non-compliant. This was the highest use of undertakings since their introduction in 2008 through amendments to the HMIRA. The benefit of compliance undertakings is that corrections to violations on MSDSs are made earlier and, in turn, this corrected information is available earlier in the workplace.

Chart 1: Early Compliance through Voluntary Undertakings



Violations per claim increased in 2011-12 from 3.4 to 6.3. This was reflected in new and re-filed claims, and particularly under toxicological properties and hazardous ingredients. The three year trend in violations is shown in Table 2 below.

Related to violations, Commission staff undertook an assessment of preventive measures, including Personal Protective Equipment (PPE), as reported on MSDSs. Results pointed to a lack of specific information generally in MSDS preparation (i.e. not only MSDSs reviewed by HMIRC); that HMIRC cannot require disclosure of information not required by the HPA/CPR; that specific knowledge of which hazards are associated with which ingredients, whether trade secret or not, would be useful to employers and workers.

Table 2

Data description	2009-2010	2010-2011	2011-2012
Total violations	1085	1251	**1998**
Total number of claims (decisions issued)	240[5]	365	**319**
Average number of violations per claim	4.5[6]	3.4	**6.3**

Over the past year, the Commission pursued the development and implementation of the Operations Branch Process Improvement Project (OBPIP). The objective of this project is to assess and improve the efficiency, effectiveness and economy of the Claims Business Process. A Process Improvement Project Team was created to oversee and complete all the activities of the project. The Team developed a six point action plan, highlighting early project advancement, the policy assessment and management assessment priorities. 2011-12 saw the completion of the Business Process Map, the information gathering phase, and the initiation of several early process improvements. Discussions were held on a regular basis and, subsequently, approval was given for the electronic submissions pilot project (E-Submissions), a component of the OBPIP. The E-Submissions project will provide a cost effective mechanism for secure electronic transfer of protected documents, such as applications for exemptions or HMIRC decision documents, between claimants and HMIRC in 2012-13.

Lessons Learned

HMIRC staff will continue to work with claimants on a direct basis to encourage earlier provision of information related to claim validity reviews.

The Commission will continue to examine ways to improve the guidance provided to claimants for MSDSs with trade secret ingredients, including preventive measures and PPE selection information. It will also explore the linking of hazards to ingredients on MSDSs to assist employers and workers in conducting risk assessment.

The Commission will maintain a production focus to support program sustainability.

[5] Results for 2009-10, as previously published in DPR 2009-10, inadvertently recorded data for 13 rather than 12 months. These results have been adjusted from 257 claims to 240, and 4.2 violations per claim to 4.5, in DPR 2010-11.
[6] Ibid.

Program Activity 1.2: Stakeholder Engagement and Strategic Partnerships

Description:

The exclusive work completed by the Commission enables it to gather unique information and data holdings on hazard communications under the Workplace Hazardous Materials Information System in terms of completeness, accuracy, comprehensibility and accessibility. Through partnerships, the Commission attempts to more fully a) mine, b) test and compare and c) share its knowledge so as to improve hazard communications for Canadian industry and Canadian workers. It also uses this knowledge to improve the understanding and proficiency of interested domestic and international public bodies in developing hazard communication approaches, tools and standards. Consequently, this program supports the establishment of mutually beneficial partnerships that contribute to the creation and distribution of information and knowledge that enhance the safe handling of hazardous chemicals.

2011–12 Financial Resources ($ thousands)

Planned Spending	Total Authorities	Actual Spending
538	571	427 See note 4 on page 8

2011–12 Human Resources (Full-Time Equivalents)

Planned	Actual	Difference
5	5	0

Expected Results	Performance Indicators	Targets	Performance Status
Improved knowledge and proficiency of hazard communications	Percentage of participants who increased knowledge of hazard communication due to outreach activity	75%	75%
	Percentage of participants at outreach activity who used increased knowledge to improve hazard communication	25%	78%

Performance Summary and Analysis of Program Activity

In 2011-12 the Strategic Partnership Framework and its action plan was finalized and approved. This framework structures the approach to pursuing strategic partnerships and is designed to leverage organizational knowledge, expertise and resources, while maximizing the potential for success and impact. In support of these objectives the Commission began to inventory what could be of value or interest to potential partners, including in particular data and statistics on MSDS violations and levels of compliance, the chemical ingredient database with WHMIS classification information and references for more than 3000 chemicals, and expertise in chemical assessment and classification, and MSDS and label compliance. The response from surveyed stakeholders confirmed the positive impact of HMIRC's work in improving hazard communication.

Lessons Learned

The Commission recognizes the value of strategic partnerships in addressing various issues related to hazard communication, notably the implementation of GHS in Canada. It will be important to determine what collaborations will produce the most efficient, effective and economical results.

Program Activity 1.3: Internal Services

Description:

Internal Services are groups of related activities and resources that are administered to support the needs of programs and other corporate obligations of an organization. At HMIRC these groups are: Management and Oversight Services; Legal Services; Communications Services; Human Resources Management Services; Financial Management Services; Information Management Services; Information Technology Services; Acquisition Services; and Travel and Other Administrative Services. Internal Services include only those activities and resources that apply across an organization and not to those provided specifically to a program.

2011–12 Financial Resources ($ thousands)

Planned Spending	Total Authorities	Actual Spending
1,200	1,276	1,912 See note 4 on page 8

2011–12 Human Resources (FTEs)

Planned	Actual	Difference
12	13	1

Performance Summary and Analysis of Program Activity

The Commission continued enhancement of its corporate services through the improved integration of planning activities. The principal element, the Operational Plan, enumerated activities and required resources across the organization, as well as expected results for the end of the year.

Other components addressed more specific program needs and corporate obligations during 2011-12. Analysis and consultations on performance measurement and evaluation at various levels will support a more comprehensive approach for this function in the Commission. HMIRC was also part of the Office of the Comptroller General of Canada horizontal audit of compliance on the Management of Resources and Results Structures and was found fully compliant with all audit criteria. An initial retention and disposition of information holdings was carried out, as well as a revision of information security classification. Information technology developed business requirement definitions and an economical E-submission solution was proposed and approved for implementation in 2012-13.

SECTION III: SUPPLEMENTARY INFORMATION

Financial Highlights

Condensed Statement of Financial Position (Unaudited)

As at March 31, 2012
($ thousands)

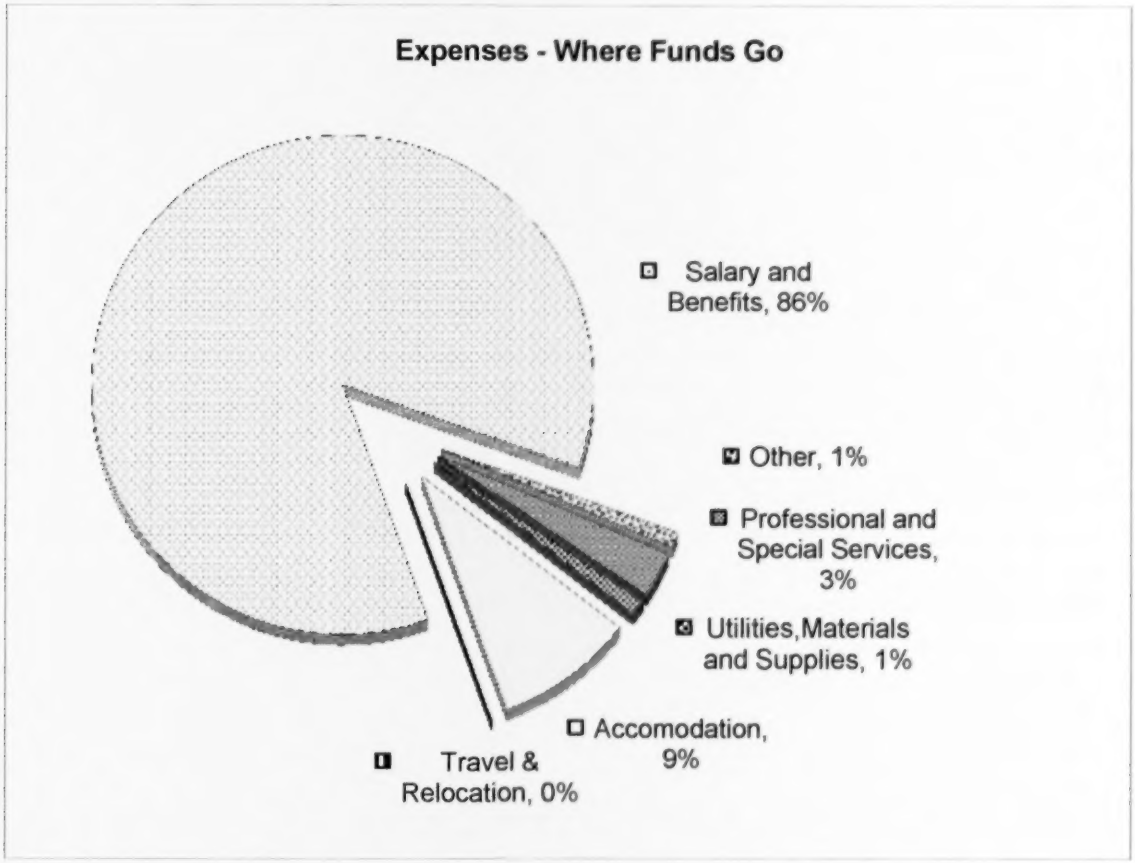
	Change $	2011–12	2010–11
Total net liabilities	883	2,049	1,166
Total net financial assets	(66)	71	137
Departmental net debt	949	1,978	1,029
Total non-financial assets	0	0	0
Departmental net financial position	(949)	(1,978)	(1,029)

Condensed Statement of Operations and Departmental Net Financial Position (Unaudited)

For the Year Ended March 31, 2012
($ thousands)

	Change %	2011–12	2010–11
Total expenses	-10.5%	6,342	7,088
Total revenues	0	0	0
Net cost of operations before government funding and transfers	-10.5%	6,342	7,088
Departmental net financial position	92.2%	(1,978)	(1,029)

Financial Highlights Chart



Financial Statements

http://www.hmirc-ccrmd.gc.ca/publications/fs-ef/fs-ef-1112-eng.shtml

List of Supplementary Information Tables

Electronic supplementary information tables listed in the 2011–12 Departmental Performance Report can be found on HMIRC website.

- Sources of Respendable and Non-Respendable Revenue
- User Fees Reporting
- Greening Government Operations
- Internal Audits and Evaluations

SECTION IV: OTHER ITEMS OF INTEREST

Organizational Contact Information

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